



UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER FOR PATENTS
P.O. Box 1450
Alexandria, Virginia 22313-1450
www.uspto.gov

| APPLICATION NO. | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
|-----------------|-------------|----------------------|---------------------|------------------|
|-----------------|-------------|----------------------|---------------------|------------------|

10/726,028

12/02/2003

Glenn Butler

LS-002

4694

31647 7590 12/29/2006
DUGAN & DUGAN, P.C.
55 SOUTH BROADWAY
TARRYTOWN, NY 10591

EXAMINER

FARAH, AHMED M

ART UNIT

PAPER NUMBER

3735

| SHORTENED STATUTORY PERIOD OF RESPONSE | MAIL DATE | DELIVERY MODE |
|--|-----------|---------------|
|--|-----------|---------------|

3 MONTHS

12/29/2006

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

If NO period for reply is specified above, the maximum statutory period will apply and will expire 6 MONTHS from the mailing date of this communication.

| | | | |
|------------------------------|------------------------|---------------------|--|
| Office Action Summary | Application No. | Applicant(s) | |
| | 10/726,028 | BUTLER, GLENN | |
| | Examiner | Art Unit | |
| | Ahmed M. Farah | 3735 | |

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on ____.
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-29 is/are pending in the application.
- 4a) Of the above claim(s) ____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) ____ is/are allowed.
- 6) ☒ Claim(s) 1-29 is/are rejected.
- 7) ☐ Claim(s) ____ is/are objected to.
- 8) ☐ Claim(s) ____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on Feb. 2, 2003 is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
 Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. ____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. ____. |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date ____. | 6) <input type="checkbox"/> Other: ____. |

DETAILED ACTION

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

1. Claims 21, 24-27 and 29 are rejected under 35 U.S.C. 102(b) as being anticipated by Hakky, US Patent No. 6,152,919.

Hakky discloses a laser resectoscopic apparatus and methods of use, the apparatus comprising:

a multi-lumen catheter/cannula 16 adapted to be disposed in a treatment site, the catheter including:

a fiber optic light distribution member 22 adapted to irradiate the treatment site with laser light (see Fig. 1 and col. 3, lines 1-10);

at least one irrigation lumen, which receives irrigation saline fluid from a fluid source 64 (see col. 3, lines 41-46); and

at least one aspiration lumen, which removes the irrigation fluid, along with blood, resected tissue and other debris from the treatment site (see col. 3, lines 46-50).

2. Claims 1, 3, 5-8, 10, 11, 13-22, 24-27 and 29 are rejected under 35 U.S.C. 102(b) as being anticipated by Leckrone et al. US Patent no. 5,026,367.

Art Unit: 3735

Leckrone et al. disclose a laser angioplasty catheter system and methods of use, the catheter system comprising:

a plurality of optical fibers 41 adapted to irradiate the treatment site with laser light (see Figs. 1 and 5 and col. 4, lines 36-41);

at least one irrigation lumen 35, which delivers irrigation fluid, such as saline to the treatment site(see Figs. 5 and 10, and col. 4, lines 26-35);

at least one aspiration lumen 48, which removes the irrigation fluid, along with blood, resected tissue and other debris from the treatment site (col. 4, lines 52-60); and

a control means configured to control the flow rate of the irrigation/aspiration fluid as presently claimed (see col. 2, lines 61-68).

3. Claims 10, 11, 13-22, 24-27 and 29 rejected under 35 U.S.C. 102(b) as being anticipated by Fox et al. US Patent No. 5,041,108.

Fox et al. disclose a catheter apparatus for treating a body lumen, the catheter comprising:

an optical fiber bundle 16 adapted to irradiate the treatment site with a laser light;

at least two irrigation channels 42, 44, adapted to deliver irrigation fluid, such as saline to the treatment site;

at least one suction channel 40 adapted to remove the irrigation fluid and other debris from the treatment site; and

a control means configured to control the laser source and the irrigation/aspiration sources as presently claimed (see Figure 1).

4. Claims 1, 9, 12, 21 and 28 are rejected under 35 U.S.C. 102(b) as being anticipated by Reynard US Patent No. 5,651,783.

Reynard discloses a phacoemulsification laser apparatus for treating glaucoma, the apparatus comprising:

a multi-lumen catheter including:
a fiber optic bundle adapted to irradiate the treatment site with a laser light;
an irrigation lumen configured to deliver irrigation fluid to a treatment site;
an aspiration lumen configured to remove debris from the treatment site; and
a control means configured to control the functions of the laser source and the irrigation/aspiration lumens (see col. 11, lines 1-5 and claim 1).

As to claims 9 and 28, the light source is selected from the group comprising UV, visible, and IR light sources (see col. 2, lines 47-61).

As to claim 12, the aspiration line and at least one or more of the other catheter lumens are concentrically arranged (see Figs. 8 and 9).

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Art Unit: 3735

5. Claims 2, 4 and 23 are rejected under 35 U.S.C. 103(a) as being unpatentable over Fox et al. in view of Hareyama et al. US Patent No. 6,605,082.

Fox et al, describes above, do not teach the use of a temperature sensor to measure the temperature of the treatment site, or the arrangement of the optical fibers as recited in claims 4 and 23.

Hareyama et al. disclose an alternative treatment apparatus comprising a temperature sensor configured to measure the temperature of the tissue being treated. As to claims 4 and 23, the Examiner notes that the use of angled fiber/air interface is known in the art.

Therefore, at the time of the applicant's invention, it would have been obvious to one skilled in the art to modify Fox et al. in view of Hareyama and incorporate a temperature sensor to the device of Fox et al. to monitor the temperature of the treatment site in order to prevent unintended heating and/or burning of the tissues at or near the treatment site.

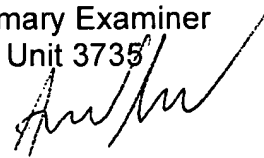
Any inquiry concerning this communication or earlier communications from the examiner should be directed to Ahmed M. Farah whose telephone number is (571) 272-4765. The examiner can normally be reached on Mon, Tue, Thur and Fri between 9:30 AM 7:30 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Marmor II Charles can be reached on (571) 272-4730. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Art Unit: 3735

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

Ahmed M Farah
Primary Examiner
Art Unit 3735



December 24, 2006.